

FACEBOOK – PUBLISHER LICENSE AGREEMENT (“AGREEMENT”)

Capitalized terms used in this Agreement are defined as set forth in this Agreement. Each Party will keep the terms of this Agreement and the fact of the discussions between the Parties strictly confidential, subject to the terms of the Non-Disclosure Agreement. This Agreement is an experimental, non-precedential, binding agreement between Facebook and Publisher.

| Topic | Terms |
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| Parties | <p>The parties to this Agreement are:</p> <ul style="list-style-type: none"> • Facebook Inc., located at 1601 Willow Road, Menlo Park, California 94025 USA (“Facebook”) and • The individual or entity who acknowledges and accepts the terms and conditions as set forth herein, including all companies or entities purported to be represented by or through such individual or entity, as well as its and their individual employees, agents or representatives, together with any owned, controlled, or administered catalog(s) of Publisher Compositions (as defined below) (“Publisher”). <p>Facebook and Publisher are sometimes referred to individually as a “Party” and collectively as the “Parties”.</p> |
| Overview | <p>Facebook is interested in exploring a partnership with the music industry to, among other things, empower user communication, connection and creativity through video on the Facebook Properties. That partnership will enable users to:</p> <ul style="list-style-type: none"> • upload to and/or stream via the Facebook Properties videos that contain musical compositions (including Publisher Compositions) (“Organic User Videos”); • create clips of sound recordings that embody musical compositions (including Publisher Compositions) (which functionality is offered as part of a library of music with other tools or filters for expression (the “Audio Library”)) and to incorporate such clips into user-uploaded videos or slide shows, whether simultaneous with or following creation of the video recording (“Audio Library User Videos”), on the Facebook Properties; and • transmit and/or receive transmissions of live streams that contain musical compositions (including Publisher Compositions) (“Live Streams”), via the Facebook Properties. <p>Organic User Videos and Audio Library User Videos are sometimes referred to herein as “VOD User Videos”; and together with Live Streams, as “User Videos”.</p> |
| Term | <p>The term of this Agreement is from the date Publisher opts in to this Agreement (the “Effective Date”) until March 12, 2020, unless earlier terminated in accordance with the terms and conditions herein (the “Term”).</p> |
| Territory | <p>“Territory” means the United States, its territories, possessions, and commonwealths.</p> |
| Facebook Properties | <p>Facebook, Messenger, Instagram and Oculus, including the players, pages, apps, APIs and tools owned or controlled by Facebook (in each case, including successor and derivative versions) which are integrated with Facebook, Messenger, Instagram or Oculus (including, for clarity, all functionality thereof (such as Live)), across any form factor whether offered under the foregoing brands or Facebook owned or controlled brands (the “Facebook Properties”).</p> |
| License | <p>Publisher hereby grants to Facebook those rights necessary during the Term in the Territory to:</p> <ol style="list-style-type: none"> 1. host and/or stream User Videos containing Publisher Compositions on or via the Facebook Properties; 2. make available Publisher Compositions as embodied in sound recordings on the Facebook Properties for use by users in the creation of Audio Library User Videos, including enabling users to preview no more than thirty (30) seconds at a time of such sound recordings embodying Publisher Compositions, provided that no more than ninety (90) seconds (which 90-second portion may be chosen by the user) of any sound recording is made available by Facebook for users to incorporate into Audio Library User Videos; 3. display Publisher Compositions’ lyrics in User Videos and Feature Testing on the Facebook Properties; |

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| | <p>4. use Publisher Compositions (as embodied in sound recordings or otherwise) in Feature Testing; and</p> <p>5. make available other features and functionality described in this Agreement.</p> <p>For the avoidance of doubt, (i) the license grant above includes reproduction, display, synchronization, public performance and/or any other rights in respect of Publisher Compositions necessary to provide or enable the functionality and/or offerings set forth above in the Territory during the Term and (ii) Facebook reserves the right, but is not obliged to, monetize User Videos through advertising during the Term. For clarity, no synchronization and/or reproduction rights are granted hereunder with respect to any commercial content. Subject to the following paragraph, the license to Publisher Compositions on Messenger is limited to Feature Testing only.</p> <p>Notwithstanding the foregoing, to the extent that Publisher Compositions are embodied in any content on any of the Facebook Properties (including, without limitation, commercial content, video advertisements, virtual reality experiences, etc.), Publisher hereby grants to Facebook the right to publicly perform such Publisher Compositions as embodied in such content (commercial or otherwise) on or via the Facebook Properties during the Term in the Territory.</p> |
| <p>Publisher Compositions</p> | <p>Content Commitment: Publisher agrees to include and allow for inclusion in User Videos on the Facebook Properties and in Feature Testing, its full catalog of Publisher Compositions for the Term of this Agreement.</p> <p>“Publisher Composition” means any musical composition (in whole or in part) in which the rights that are the subject of this Agreement are owned, controlled or administered by Publisher, in whole or in part, solely to the extent of Publisher’s ownership, control or administration thereof (i.e., Publisher is not granting any so-called “100% licenses” hereunder), and any accompanying lyrics (whether as embodied in a sound recording or otherwise).</p> |
| <p>Commercial Use Protections</p> | <p>Notwithstanding anything to the contrary, User Videos containing Matched Sound Recordings that Publisher has identified as corresponding to Publisher Compositions and which are uploaded by business page (on Facebook) or business account (on Instagram) holders (“Business Users”), will be flagged as “potentially commercial content” in Rights Manager. Such functionality and a process for review of “potentially commercial content” will be implemented prior to the end of Q2 2019.</p> <p>In addition, Business Users will not have access to the Audio Library.</p> <p>Publisher reserves all rights towards users (including Business Users) who post videos that represent unauthorized commercial use of Publisher Compositions, including Publisher’s right to seek appropriate licenses from such users. Notwithstanding anything to the contrary, Facebook will not be liable (and will not be deemed to be in breach of this Agreement) for any unauthorized commercial use of Publisher Compositions by users (including Business Users), provided Facebook complies with any notice submitted to Facebook by Publisher in accordance with Publisher’s Blocking Rights below in respect of any such unauthorized uses.</p> <p>The Parties acknowledge that the purpose of the potentially commercial content review queue described herein is generally to provide an opportunity for Publisher to review User Videos containing Publisher Compositions uploaded by Business Users for the purposes of verifying whether or not any such User Videos are appropriately licensed, identifying to Publisher potential licensing opportunities.</p> |
| <p>Blocking</p> | <p>In exchange for the Fee set forth below, Publisher shall not request that a User Video be taken down from the Facebook Properties other than by Blocking pursuant to the following (“Publisher’s Blocking Right”): Publisher may on a one-off basis and in good faith submit Blocking notices to Facebook in respect of particular copies of User Videos embodying Publisher Compositions at specified URLs on Facebook, Instagram, and Oculus in virtual rooms (but not Messenger), due to a bona fide writer objection or legal risk to Publisher as determined in Publisher’s reasonable discretion.</p> <p>Notwithstanding anything to the contrary, the intent of the Parties is to enter into a blanket, full-catalog license agreement. Publisher agrees not to exercise Publisher’s Blocking Right in a manner that will have more than a <i>de minimis</i> impact in quantity and quality of Publisher Compositions on the Facebook</p> |

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| | <p>Properties.</p> <p>Publisher will be able to exercise Publisher’s Blocking Right either by communicating the applicable User Video URL to HFA or to Facebook via a designated email address or online form.</p> <p>Notwithstanding anything to the contrary, in the event Facebook’s technology does not identify or effectuate a Block of a particular copy of a User Video embodying a Publisher Composition to the extent required in this Agreement, then provided that Facebook uses commercially reasonable efforts to effectuate Blocking of such copy at the URL specified by Publisher, Publisher’s sole and exclusive remedy under this Agreement will be the prompt Blocking thereof at such URL, and Facebook will not be deemed to be in breach of this Agreement.</p> <p>During the Term of this Agreement, all Blocks by Publisher on the Facebook Properties will be effected solely pursuant to the terms and conditions of this Agreement.</p> |
| <p>Fees</p> | <p>Provided that Publisher opts into this Agreement prior to 11:59 pm Eastern Time on March 12, 2018, in consideration for the rights and covenants granted herein, Facebook will pay to Publisher, on an experimental and non-precedential basis, a non-recoupable lump sum of its share of the Independent Pool (as defined below) as set forth in Exhibit A (the “Fee”).</p> <p>The Fee paid by Facebook shall be inclusive of all amounts due to Publisher with respect to this Agreement.</p> |
| <p>Parity</p> | <p>Facebook warrants that:</p> <p>(i) Facebook has established a total and maximum pool of monies (the “Pool”), available for payment by Facebook during the Term, to any and all musical composition rights holders in the United States. “Musical composition rights holders” include Universal Music Publishing Group, Sony/ATV, and/or Warner/Chappell (each, a “Major”), and any music publishing company or other owner or licensor of musical compositions that is not a Major (each, an “Independent”) that may enter into a substantially equivalent commercial agreement with Facebook during or in respect of the Term for the use of all or substantially all of their catalogue in connection with User Videos and Feature Testing on the Facebook Properties (“Equivalent Agreement”) taking into account the scope of rights granted or other benefits received by Facebook, the territorial scope, and the contractual term, of or under this Agreement relative to Equivalent Agreements.</p> <p>(ii) Facebook shall allocate such Pool between the monies available for payment to the Independents (the “Independent Pool”) and the monies available for payment to the Majors (the “Major Pool”) according to the relative market shares of the Independents (in aggregate) and each of the Majors as reported by Music & Copyright for 2016; and (B) Facebook shall allocate the Independent Pool according to the relative NMPA Market Share (as defined below) of the Independents.</p> |
| <p>Specifications and Product Restrictions</p> | <p>In connection with the Facebook Properties, the following specifications apply:</p> <ul style="list-style-type: none"> • Users of the Facebook Properties will be subject to the terms of use of the applicable Facebook Properties (e.g., Facebook’s Statement of Rights and Responsibilities). • The Facebook Properties will enable limited time shifting and/or temporary caching of User Videos to optimize playback in low or no bandwidth situations. • For clarity, in the event a label, artist or similar third party uploads and/or streams a video through the Facebook Properties, such label, artist or similar third party is deemed to be a user hereunder. • The user who initially recorded, uploaded or live streamed an Organic User Video to the Facebook Properties may be permitted to download a permanent copy of their Organic User Video via their account. <p>Solely for informational purposes: Facebook will, pursuant to commercial agreements with record label partners, implement certain abuse prevention mechanisms to inhibit abusive use of User Videos as an audio-only music listening experience in violation of Facebook’s terms of service (the “Abuse Prevention”).</p> |

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| | <p>Measures”) as set forth in Exhibit B.</p> |
| Content Delivery; Reporting | <p>HFA will provide to Facebook on behalf of Publisher the following information:</p> <ul style="list-style-type: none"> composition information (i.e., composition title(s); writer name(s)); HFA song code; Publisher’s ownership share for such compositions; ISWC, IPI, PRO affiliation, including a foreign society if a society has registered ownership of the work in HFA system and recording information (i.e., the recording artist name(s), album title, record label and ISRC(s)). <p>Publisher will provide HFA with updates to the above information throughout the Term as frequently as such updates are delivered to other partners, including available new release metadata.</p> <p>Publisher agrees to work with Facebook and HFA in good faith to identify and address data gaps, if any, in Publisher’s catalog information.</p> |
| Downstream Payment | <p>Facebook will not be in a position to provide track-level or composition-level reporting during the Term. It shall be Publisher’s responsibility to determine how to allocate, if necessary, any Fee it receives to all downstream royalty participants in respect of Publisher Compositions.</p> |
| Confidentiality; Press Releases | <p>Each Party will keep the terms of this Agreement and the data provided or generated pursuant to this Agreement (including any reports provided pursuant to this Agreement) confidential and will not disclose such terms or data to any person without the prior written consent of the other Party, except to employees or contractors as set forth below. The recipient of confidential information will: (a) hold confidential information in strict confidence and take reasonable precautions to protect such confidential information (such precautions to include, at a minimum, all precautions recipient employs with respect to its own confidential materials); (b) not divulge any confidential information to any third party (other than to employees or contractors as set forth below); and (c) not copy or reverse engineer any materials disclosed under this Agreement or remove any proprietary markings from any confidential information. Any employee or contractor given access to any confidential information must have a legitimate “need to know” such confidential information for use and recipient will remain responsible for each such person’s compliance with the terms of this Agreement.</p> <p>Notwithstanding the foregoing, Publisher may disclose to its royalty participants (including writers) solely that information necessary for Publisher to comply with its reporting obligations to such royalty participants pursuant to Publisher’s written agreements, and solely subject to obligations of confidentiality to Publisher no less restrictive than the obligations of confidentiality herein. Publisher shall remain responsible for such writer/publisher clients’ uses of any information disclosed hereunder.</p> <p>This Agreement imposes no obligations with respect to information which: (a) was in recipient’s possession before receipt from discloser; (b) is or becomes a matter of public knowledge through no fault of recipient; (c) was rightfully disclosed to recipient by a third party without restriction on disclosure; or (d) is developed by recipient without use of the confidential information as can be shown by documentary evidence. Recipient may make disclosures to the extent required by law or court order provided recipient makes commercially reasonable efforts to provide discloser with notice of such disclosure as promptly as possible and uses diligent efforts to limit such disclosure and obtain confidential treatment or a protective order and has allowed discloser to participate in the proceeding.</p> <p>Without prejudice to the generality of the foregoing, Publisher, without the prior written approval of Facebook, may not publicize, in a press release or otherwise, the existence or terms of this Agreement or any other aspect of the relationship between the Parties.</p> |
| Covenant Not To Sue | <p>Publisher, on behalf of itself, its parents, subsidiaries and affiliates and its and their respective assignees and writers (collectively, the “Publisher Entities”), agrees not to directly, or through an agent or third party, Sue Facebook or its parents, subsidiaries or affiliates or its or their respective directors, officers or employees: during or after the Term, in respect of the exploitation of Publisher Compositions on or via the Facebook Properties during the Term (other than in respect of a breach of this Agreement by Facebook). “Sue” means litigate, fund litigation, pursue enforcement activity or encourage third parties to do any of the foregoing.</p> |

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| | <p>Provided Facebook is actively and in good faith seeking to obtain licenses inclusive of Publisher repertoire in countries outside of the Territory, the Publisher Entities will not, directly or through an agent or third party, Sue Facebook or its parents, subsidiaries or affiliates or its or their respective directors, officers, or employees during or after the Term in respect of copyright infringement claims relating to Publisher Compositions on or via the Facebook Properties that arise outside of the Territory during the Term. Nothing in this paragraph is intended to prevent the Publisher Entities from participating in deals in respect of Publisher Compositions with societies that license musical compositions in countries outside of the Territory. In the event that Facebook migrates from Audible Magic blocking to its Rights Manager system in any country outside of the Territory without a valid license, Publisher shall not be bound by the above covenant not to sue in any such territory. Nothing in this paragraph is intended to be a permanent waiver of any of Publisher’s rights or remedies in an unlicensed territory.</p> |
| Release | <p>Publisher, on behalf of itself and the other Publisher Entities, hereby irrevocably and unconditionally releases, acquits and forever discharges Facebook, its affiliates (but solely to the extent related to a claim connected to any user’s use of Publisher Compositions on the Facebook Properties) and its and their respective officers, directors, and employees (but solely to the extent such officers, directors or employees are or were acting in their respective capacities as directors, officers or employees of Facebook or its affiliates), with respect to any claims connected to any user’s use of Publisher Compositions on the Facebook Properties, whether known or unknown, solely with respect to matters occurring prior to the Effective Date of this Agreement and in the Territory.</p> |
| Feature Testing | <p>Feature Testing will include a limited set of content, including Publisher Compositions, that Facebook may use to test and experiment with audio-visual features or tools on the Facebook Properties in the Territory.</p> <ul style="list-style-type: none"> • Feature Testing will not: (i) include audio-only music listening features, (ii) permit users to download permanent copies of sound recordings embodying Publisher Compositions, (iii) be made available pursuant to a model charging users for access to sound recordings, and (iv) permit users to use or distribute content off the Facebook Properties. • The music in Feature Testing will not be made available by Facebook to developers for third-party feature creation. • Feature Testing will be subject to all other restrictions as set forth herein, to the extent applicable. <p>Facebook welcomes Publisher’s input on potential innovation projects for Facebook to engage in during the Term.</p> |
| General | <p>General terms and conditions are incorporated herein by referenced and attached hereto as Exhibit C.</p> |

ACKNOWLEDGED AND AGREED:

PUBLISHER

Publisher’s electronic opt-in to this Agreement via the HFA Agreement Portal constitutes Publisher’s binding agreement to these terms.

By clicking “Agree”, you represent and warrant that you have read and understood this Agreement including the RELEASE and COVENANT NOT TO SUE (above), agree to its terms and conditions and will abide by it, and that you are either:
 (i) a legal entity, and the individual entering into this Agreement is Publisher’s agent or representative authorized to enter into this Agreement on Publisher’s behalf; or
 (ii) a natural person with the capacity to assent to this Agreement as Publisher.

Exhibit A
Fee Calculation

Facebook shall calculate the Fee as follows:

Defined Terms:

- **“Independent Pool”** means \$45,000,000.
- **“HFA Market Share”** means Publisher’s pro-rata share of payments made by HFA to music publishers from revenue sources where HFA are administrators of both affiliate and non-affiliate publisher payments, for uses in 2016.
- **“NMPA Market Share”** means Publisher’s pro-rata share of the music publishing market for 2016 as calculated and reported to Publisher by the National Music Publishers Association for all revenue categories.
- **“Non-Member/Affiliate Pool”** means a portion of the Independent Pool that Facebook will reserve for publishers with zero NMPA Market Share or no reported NMPA Market Share (for example if a publisher is not a member of the NMPA).

Fee Calculation

If Publisher has an NMPA Market Share greater than zero, Facebook shall calculate Publisher’s Fee as Publisher’s pro-rata share of the Independent Pool (i.e., Publisher’s relative share of the independent publishing market) based upon Publisher’s NMPA Market Share.

For purposes of calculating the Fee, Publisher authorizes NMPA to communicate Publisher’s NMPA Market Share to Facebook and HFA.

If Publisher has zero NMPA Market Share or no reported NMPA Market Share, Publisher’s Fee shall be calculated as Publisher’s pro-rata share of the Non-Member/Affiliate Pool based upon Publisher’s HFA Market Share.

Fee Payment

Facebook shall make payment of Publisher’s Fee to HFA and HFA shall make payment to Publisher. Fifty percent (50%) of the Fee will be paid on or before ninety (90) days after the end of the applicable Opt-In Period (as defined in the opt-in materials) during which Publisher opted into this Agreement. Fifty percent (50%) of the Fee will be paid on or before the one-year anniversary of the first payment. If Publisher’s Fee is less than or equal to \$500, Facebook may elect to pay Publisher the full (i.e., 100% of) Publisher Fee in the initial payment. In order to effectuate payment, Publisher shall provide to HFA payment information as requested by HFA.

Exhibit B
Specifications and Abuse Prevention Measures

By way of example, the Abuse Prevention Measures will substantially include:

- Facebook will not enable “background mode” for Matched Sound Recordings on mobile – i.e. placing video in the background so only the music of a video can be heard while a user multi-tasks in other apps. For clarity, the Parties acknowledge that this limitation will not apply to feature sets (e.g., at an operating system level) that Facebook cannot control;
- Facebook will use Rights Manager to Block newly-uploaded VOD User Videos on the Facebook Properties that contain one or more nearly complete Matched Sound Recordings with a static image; and
- Facebook will use Rights Manager to Block any newly-uploaded VOD User Video on the Facebook Properties that contains five or more nearly complete Matched Sound Recordings;

Facebook plans to implement the Abuse Prevention Measures on Facebook and Instagram solely in respect of Matched Sound Recordings.

The Abuse Prevention Measures (including Blocking) will not apply to Messenger. The Abuse Prevention Measures (including Blocking) will apply to Oculus streaming of User Videos in Oculus virtual rooms.

Facebook intends to implement Rights Manager and the Abuse Prevention Measures as expeditiously as practicable during the Term. Publisher acknowledges that Facebook may continue to use its filtering tools as deployed on the Effective Date, that Facebook intends to migrate filtering from Audible Magic to Rights Manager during the Term, and that Facebook may implement such migration on a country-by-country basis and on a track-by-track basis.

For clarity, music owned or controlled by Facebook (which music, for clarity, does not embody any Publisher Composition(s)) will not be subject to the Abuse Prevention Measures or Blocking. In addition, advertisements and Trusted Content will not be subject to the Abuse Prevention Measures or Blocking. “**Trusted Content**” means content uploaded to and/or streamed via the Facebook Properties by a party that has met Facebook’s then-current criteria for someone trusted to own or control all relevant rights in such content.

Notwithstanding anything to the contrary, nothing in this Agreement shall limit or restrict use or distribution of User Videos that do not include music, and the inclusion of music shall be determined by the presence of sound recordings that Facebook has been able to match (using Rights Manager or Audible Magic) or individual User Videos identified manually or otherwise by a rights owner.

The following terms are defined as follows:

- “**Block**” means to prevent playback of the video or audio track of a particular User Video in the Territory by anyone other than the user that created or uploaded the relevant User Video.
- “**Matched Sound Recording**” means a sound recording matched to the audio fingerprint of a sound recording reference file delivered by a record label pursuant to a commercial agreement with Facebook and that is available in the Rights Manager reference file database.
- “**Rights Manager**” means Facebook’s proprietary rights management system to be developed and launched during the Term.

Exhibit C
Facebook Standard Terms and Conditions

| Topic | Terms |
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| Definitions | <p>Capitalized terms used but not defined in this Exhibit C have their respective meanings ascribed elsewhere in this Agreement. The following capitalized terms will have their respective meanings ascribed as follows:</p> <ul style="list-style-type: none"> • “Claim” means any claim, action or proceeding (including arbitration) asserted, commenced or threatened against a party by an unaffiliated third party. • “Defend” means, with respect to a Party, to defend, indemnify and hold harmless such Party and its Related Parties from and against any and all Losses due to certain Claims. • “Law” means any applicable local, state, federal, foreign or international law, statute, treaty, ordinance, rule, regulation, code, tariff, order, judgment or decree. • “Losses” means awards, damages, liabilities, losses, settlements, and expenses including costs, reasonable third-party legal fees and reasonable third-party costs of investigation. • “Related Parties” means, with respect to a party, such party’s past and present parents, subsidiaries, affiliates, divisions, components, and each of their respective officers, agents, investors, shareholders, clients, representatives, insurers, past and present employees, partners, directors, advisors and permitted assigns. |
| Contractors | <p>Facebook may permit independent contractors to exercise its rights or perform its obligations under this Agreement, in respect of the Publisher Compositions, provided that if any such independent contractor takes any action or omits to take any action that would breach this Agreement if it were Facebook, Facebook will be deemed to be in breach of this Agreement as if such action or omission were or were not taken by Facebook.</p> |
| Use of Rights Manager | <p>The Parties acknowledge (i) Facebook may share Publisher’s contact information as provided by Publisher in Rights Manager (for clarity, this contact information may be an email alias) with users whose content matches Publisher’s reference files; and (ii) Publisher may not knowingly submit false or erroneous claims.</p> |
| Statutory Takedown Rights | <p>Notwithstanding anything to the contrary, during the Term, Publisher hereby agrees that it will not exercise any rights it has or may have under applicable law in the Territory in respect of the Facebook Properties to take down any User Videos and that any take downs will be effected solely pursuant to the terms and conditions of this Agreement.</p> |
| Third Party Rights | <p>As between Publisher and Facebook, except as expressly set forth in this Agreement:</p> <ul style="list-style-type: none"> • Facebook will be solely responsible for obtaining and paying for royalties and other amounts relating to the exploitation of sound recordings embodying the Publisher Compositions via the Facebook Properties; and • Publisher will be solely responsible for paying royalties and other amounts due to any and all songwriters and other third parties who are entitled to a royalty or other payment in connection with the permitted exploitation of the Publisher Compositions. |
| Representations and Warranties | <p>As of the Effective Date and at all times during the Term, each Party represents, warrants and covenants to the other Party that: (i) it has the full right and power to enter into and fully perform this Agreement in accordance with its terms; and (ii) its execution and performance of this Agreement will not violate the provisions of any agreement to which it is a party.</p> |
| Indemnification | <p>By Publisher. Publisher agrees to Defend Facebook due to any Claim: (i) based on facts that, if true, would constitute a breach by Publisher of this Agreement, including any warranty, representation, agreement or covenant made in this Agreement by Publisher; or (ii) that the exploitation of the Publisher Compositions as authorized in this Agreement violate or otherwise infringe on any third party’s copyright rights.</p> <p>By Facebook. Facebook agrees to Defend Publisher due to any Claim based on facts that, if true, would constitute a breach by Facebook of this Agreement, including any warranty, representation, agreement or covenant made in this Agreement by Facebook.</p> <p>Procedure. A Party entitled to be indemnified pursuant to this provision (individually and collectively, the</p> |

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| | <p>“Indemnitee”) will (i) promptly inform the Party obligated to indemnify it pursuant to this provision (the “Indemnitor”) of each Claim with respect to which it seeks indemnity, (ii) furnish to the Indemnitor a copy of each communication, notice or other action related to such Claim, and (iii) give the Indemnitor the authority, information and reasonable assistance necessary to settle or litigate such Claim, using counsel selected by the Indemnitor (provided, however, that the Indemnitee will have the opportunity to participate in the defense of such Claim with counsel of its choice, at the Indemnitee’s sole cost). Indemnitor will obtain the Indemnitee’s prior written consent prior to entering into any settlement of any such Claim that imposes any requirements on the Indemnitee or which involves agreements other than the payment of money by the Indemnitor and receipt of a full release for the benefit of the Indemnitor and the Indemnitee.</p> | | | | |
| <p>Limitation of Liability</p> | <p>EXCEPT IN CIRCUMSTANCES WHERE A PARTY HAS ACTED WITH GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR WHERE A PARTY HAS BREACHED ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER OR WHERE A PARTY HAS AN OBLIGATION TO INDEMNIFY THE OTHER PARTY HEREUNDER, AND TO THE GREATEST EXTENT PERMISSIBLE UNDER THE LAW, NEITHER PARTY WILL BE LIABLE HEREUNDER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSSES IN RELATION TO THIS AGREEMENT, INCLUDING LOSS OF PROFITS, BUSINESS, REVENUE AND/OR GOODWILL, REGARDLESS OF WHETHER SUCH DAMAGES OR LOSSES WERE OR COULD HAVE BEEN FORESEEN OR PREVENTED BY EITHER PARTY.</p> | | | | |
| <p>Tax</p> | <p>Each Party will be responsible for collecting and remitting any applicable sales, use, value added, and other comparable excise taxes due with respect to (or incurred in connection with) the license of such Party’s goods or services to its customers. Neither Party is liable for any taxes, duties, levies, fees, excises or tariffs incurred in connection with or related to the sale of the other Party’s goods or services.</p> <p>If and to the extent that Facebook is required by applicable law to withhold taxes (“Withholding Taxes”) with respect to the amounts payable to Publisher under this Agreement, Facebook will (i) withhold such Withholding Taxes from the amount otherwise payable, and remit the remaining portion of such amount to Publisher, (ii) timely remit such Withholding Taxes to the appropriate tax authority, and (iii) provide Publisher official tax receipts or other evidence issued by the appropriate tax authority for such Withholding Taxes. Notwithstanding the preceding sentence to the contrary, Facebook will not withhold taxes (or will withhold taxes at a reduced rate) with respect to any amount payable to Publisher, if Publisher timely provides Facebook with valid documentation claiming the benefits of an applicable income tax treaty (on IRS Form W-8BEN or other applicable documentation).</p> | | | | |
| <p>Notices</p> | <p>Except as otherwise specifically provided herein, all notices under this Agreement, if made by Publisher, will be in writing and will be given by courier, personal delivery, or registered or certified mail at the address for Facebook set forth below or at a substitute address designated by notice by Facebook. Notices to Publisher will be in writing and will be given as set forth below.</p> <table border="1" data-bbox="360 1320 1455 1476"> <tr> <td data-bbox="360 1320 878 1352"> <p>If to Publisher to:</p> </td> <td data-bbox="878 1320 1455 1352"> <p>If to Facebook to:</p> </td> </tr> <tr> <td data-bbox="360 1352 878 1476"> <p>Publisher’s last known mailing e-mail or mailing address as represented in HFA’s database at the time the notice is transmitted.</p> </td> <td data-bbox="878 1352 1455 1476"> <p>Facebook, Inc. 1 Hacker Way Menlo Park, California 94025 USA Attn: Legal</p> </td> </tr> </table> <p>Notices will be deemed given two (2) business days from the date mailed or, if personally delivered or posted to a publisher portal, when so delivered or posted, except that a notice of change of address will be effective only from the date of its receipt.</p> | <p>If to Publisher to:</p> | <p>If to Facebook to:</p> | <p>Publisher’s last known mailing e-mail or mailing address as represented in HFA’s database at the time the notice is transmitted.</p> | <p>Facebook, Inc. 1 Hacker Way Menlo Park, California 94025 USA Attn: Legal</p> |
| <p>If to Publisher to:</p> | <p>If to Facebook to:</p> | | | | |
| <p>Publisher’s last known mailing e-mail or mailing address as represented in HFA’s database at the time the notice is transmitted.</p> | <p>Facebook, Inc. 1 Hacker Way Menlo Park, California 94025 USA Attn: Legal</p> | | | | |
| <p>Termination; Survival</p> | <p>Termination for Breach. Without limiting any other remedy it may have at Law, either Party may terminate the Term in the event of any material breach of this Agreement by the other Party that is not remedied within thirty (30) days after notice to the breaching Party. Without limiting the generality of the preceding sentence, neither Party will be entitled to recover damages or to terminate the Term by reason of any breach by the other Party of its obligations hereunder unless the breaching Party fails to remedy such breach within thirty (30) days following receipt of notice thereof, provided that any such breach is capable of cure. The foregoing cure period(s) will not prevent either Party, whether or not a cure period has passed, from filing or pursuing any application for injunctive relief. A Party’s right to terminate the Term will be deemed to have been waived</p> | | | | |

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| | <p>for all purposes in the event that it is not exercised prior to the date upon which the breach giving rise to such right of termination has been cured.</p> <p>Bankruptcy. Either Party may terminate the Term immediately: (i) in the event that the other Party makes a general assignment for the benefit of its creditors, or any assignment in contravention of the Assignment provision below; (ii) in the event of the filing of a voluntary or involuntary petition against the other Party under any applicable bankruptcy or insolvency Law; or (iii) in the event of the appointment of a trustee or receiver or any equivalent thereof for the other Party or its property.</p> <p>Survival. The following provisions will survive any expiration, termination or assignment of this Agreement: Downstream Payment, Confidentiality; Press Releases, Covenant Not To Sue, Release, General, Definitions, Third Party Rights, Representations and Warranties, Indemnification, Limitation of Liability, Tax, Notices, this paragraph on Survival, Assignment and General.</p> |
| <p>Assignment</p> | <p>This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Each Party may assign this Agreement or any or all of its rights and/or obligations hereunder, in whole or in part, only to any affiliate or to any person or entity acquiring all or a substantial portion of the assets or business of such Party, and such rights and obligations may be assigned by any assignee thereof, but subject to the same limitations (for clarity, other than the exercise of rights and/or delegating performance of obligations to a Party's independent contractors for whose compliance with these terms and conditions such Party will be responsible). For clarity, if any portion of Publisher Compositions are transferred to a third party, such transfer will be subject to, and conditioned upon, Facebook's continued rights under this Agreement. Any purported assignment in contravention of the foregoing sentences will be deemed null and void <i>ab initio</i> and without force or effect unless contrary to applicable laws or government regulations. An assignment of copyrights or this Agreement will not relieve Publisher of its obligations hereunder.</p> |
| <p>General</p> | <p>This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. Any words following the terms 'including', 'include', 'for example' or any similar expression will be construed as illustrative and will not limit the sense of the words preceding or following those terms. Section headings and words used for defined terms are solely for convenience and are not to be used in the construction of this Agreement. For clarity, in the event Publisher makes use of the Facebook Properties, such use will be governed by the applicable terms and conditions for those Facebook Properties. The Parties have and will have the status of independent contractors hereunder. The Parties acknowledge that each Party will be responsible for performing this Agreement in accordance with all applicable Laws, and that their obligations under this Agreement will be read in a manner consistent with such applicable Laws. This Agreement cannot be waived, added to or modified orally, and no waiver, addition or modification will be valid unless in writing and signed by the Parties. The rights and remedies of each Party as specified in this Agreement are not, unless otherwise expressly set forth herein, to the exclusion of any other rights or remedies of such Party. Other than permitted assignees, no person or entity not a party to this Agreement will have any rights or remedies under this Agreement, whether as a third-party beneficiary or otherwise. Each Party may decline to exercise one or more of its rights and remedies as it may deem appropriate without jeopardizing any other of its rights or remedies. Notwithstanding anything in this Agreement, but without limiting in any way the Covenant Not to Sue, Limitation of Liability or Statutory Takedown Rights provisions herein, each of the Parties may at any time exercise any right it now has or at any time hereafter may be entitled to as a member of the public as though this Agreement were not in existence. This Agreement has been entered into in the State of California, and its validity, construction, and effect, will be governed by the Laws of the State of California applicable to contracts entered into and performed entirely within the State of California (without giving effect to any conflict of law principles under California Law). The San Mateo County, California courts (state and federal) will have sole jurisdiction of any controversies regarding this Agreement. The fact that any provisions of this Agreement are found by a court of competent jurisdiction to be void or unenforceable will not affect the validity or enforceability of any other provisions. This Agreement may be executed in one or more counterparts, each of which when taken together, will be deemed to constitute one and the same instrument. No Party may, without the prior written consent of the other Party, issue any press release or make any other public announcement or statement relating to this Agreement or the terms or</p> |

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| | conditions of this Agreement or the negotiation thereof. |
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